

## **REMARKS**

Claims 68-72 and 111-124 are currently pending in the present application. Claims 1-67 and 73-110 have been cancelled. Claims 68, 70, and 111 have been amended. Claims 112-124 are new. Reexamination of the application is respectfully requested for the reasons set forth below.

### **Rejections under 35 U.S.C. § 102(b)**

Claims 68-70, 72 and 111 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,243,717 to Moreira. Moreira discloses a device for driving a screw into a bone. Referring to Figure 1 of Moreira, the device includes an outer wrench member 15 having a longitudinal bore 16. A neck 19 at an end of the outer wrench member 15 is threaded over an end portion 20 of a bone screw S so that the end portion 20 extends into the longitudinal bore 16. An inner wrench member 12 is inserted into the longitudinal bore 16 from an opposite end of the outer wrench member 15 and moved towards the bone screw S. An end 14 of the inner wrench member 12 is threaded over the end portion 20 of the bone screw S until a shoulder 13 on the exterior of the inner wrench member 12 contacts a shoulder 17 within the longitudinal bore 16 of the outer wrench member 15. This contact prevents further relative movement between the wrench members 12, 15, (*see col. 2, lines 43-49*), which are then used to insert the bone screw S into a patient's bone. The bone screw S and wrench members 12, 15 may be advanced over a guide wire 10 to facilitate this insertion.

In contrast to the device disclosed in Moreira, claim 68 recites an apparatus including three components each accommodating another component. Specifically, claim 68 recites an elongate housing, a tubular shaft "disposed within" the housing, and an inner member "disposed within" the tubular shaft. The inner member

includes “an inner channel sized to receive an elongate tensile member or a shuttle member.”

The Examiner points to the outer wrench member 15 in Moreira as the claimed elongate housing, the inner wrench member 12 as the claimed tubular shaft, and the guide wire 10 as an elongate tensile element. Even if claim 68 were interpreted in such a manner, Moreira still lacks an inner member disposed within the inner wrench member (the alleged tubular shaft). Indeed, the only element in Moreira disposed within the inner wrench member is the guide wire itself, which does not include “an inner channel sized to receive an elongate tensile member,” as recited in claim 68. The Examiner appears to consider the second wrench member as both the claimed tubular shaft and inner member. However, such an interpretation is unreasonable because claim 68 recites the inner member “disposed within” the tubular shaft.

Because Moreira fails to disclose each of the elements recited in claim 68, Applicants respectfully request that the rejection of claim 68 be withdrawn. Applicants also request that the rejection of claims 69, 70, and 72, each of which depends from claim 68, be withdrawn for at least the above reasons as well.

Claim 111 does not recite an inner member, but does recite a housing and a shaft disposed within the housing. The housing includes a “first end configured to receive a soft tissue anchor.” As amended, claim 111 specifies that the “shaft is movable along a longitudinal axis of said housing and configured to extend beyond said first end.” Applicants respectfully submit that such a shaft is neither taught nor suggested by Moreira.

For example, the Examiner refers to the inner wrench member 12 as the claimed shaft. But the inner wrench member can only be advanced a limited distance within the longitudinal bore of the outer wrench member (the alleged tubular housing)

because of the engagement between the shoulders 13, 17. When the shoulders are engaged, the end of the inner wrench member never touches—much less extends through—the end of the outer wrench member that receives the bone screw. Thus, the inner wrench member is not “configured to extend beyond [the] first end” of the outer wrench member, as recited in amended claim 111. Therefore, Applicants respectfully request that the rejection of claim 111 under U.S.C. § 102(b) be withdrawn.

### **Allowable subject matter**

The Examiner objected to claim 71 as being dependent upon a rejected base claim, but indicated that the claim would be allowable if rewritten in independent form. Applicants respectfully submit that the claim is allowable in its current, dependent form for at least the same reasons discussed above with respect to independent claim 68. Therefore, Applicants request that the objection to claim 71 be withdrawn.

### **New Claims**

Applicants have added claims 112-123, which each read on the same species as previously examined claims 68-72 and 111 (the embodiment shown in Figs. 19 and 20A-20E).

Claim 112 recites an apparatus for repairing soft tissue. Like the apparatus of claim 68, the apparatus of claim 112 comprises an elongate housing configured to receive a soft tissue anchor, “a tubular shaft disposed in said housing . . . and having an inner bore,” and “an inner member disposed within said shaft and movable along said inner bore.” The inner member includes “an inner channel sized to receive an elongate tensile member or a shuttle member.” Applicants submit that the prior art of record, including Moreira, fails to teach or suggest each of these elements for at least the same reasons discussed above with respect to claim 68.

Claims 113-115 depend from claim 112, directly or indirectly, and thus are allowable for at least the same reasons.

Claim 116 recites an apparatus for repairing soft tissue comprising an elongated housing, a tubular shaft disposed within the housing, an inner member disposed within an inner bore of the shaft, a first actuating member coupled to the shaft, and a second actuating member coupled to the inner member. The first actuating member is “configured to move said shaft along [a] longitudinal axis of said housing and rotate said shaft about said longitudinal axis.” The second actuating member is “configured to move said inner member along said inner bore and rotate said inner member within said inner bore.” Both of the first and second actuating members are “rotatable relative to said housing.”

In *Moreira*, there is no actuating member rotatable relative to the outer wrench member 15 and configured to move and rotate an inner member with the inner wrench member 12. Thus, Applicants submit that claim 116 and its dependent claims 117-120 are patentable over *Moreira* for at least this reason.

Claim 121 recites an apparatus for repairing soft tissue as well. Similar to claim 111, the apparatus of claim 121 comprises a tubular housing having a first end configured to receive a soft tissue anchor, a driving member coupled to the shaft for rotation therewith, “whereby rotation of said shaft imparts rotation to the soft tissue anchor via said driving member,” and a first actuating member coupled to the shaft. Claim 121 further specifies that the driving member includes “a projecting distal portion configured to engage the soft tissue anchor and a proximal portion received over at least a portion of said shaft.” *Moreira* fails to teach or suggest at least such a driving member. Indeed, Applicants submit that none of the references of record teach or suggest the combination of elements recited in claim 121. Accordingly, Applicants

submit that claim 121 and its dependent claims 122-124 are patentable for at least this reason.

### **Conclusion**

Applicants respectfully submit that the foregoing is a full and complete response to the Office Action mailed on December 12, 2007. If the Examiner believes any matter requires further discussion, the Examiner is respectfully invited to telephone the undersigned attorney so that the matter may be promptly resolved.

Applicants believe that no fees are due in connection with this response other than the extension fee. However, if such petition is due or any fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to deposit account 23-3000.

Respectfully submitted,

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